

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**KELLY DUKE,**

**Petitioner,**

**v.**

**Case No. 21-CV-673**

**DAN WINKELSKI,**

**Respondent.**

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**ORDER ON THE PETITION FOR A WRIT OF HABEAS CORPUS**

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Kelly Duke, who is incarcerated pursuant to the judgment of a Wisconsin Circuit Court, filed a petition for a writ of habeas corpus. Rule 4 of the Rules Governing Section 2254 Cases states:

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Having reviewed the petition, the court is unable to say that it is plainly apparent that Duke is not entitled to relief. Therefore, the respondent shall answer the petition.

The Clerk of Court shall promptly serve the respondent by service of a copy of the petition and this order upon the State of Wisconsin Attorney General.

No later than **60 days after this order**, the respondent shall answer the petition in accordance with Rule 5 of the Rules Governing Section 2254 Cases. Duke shall then submit a brief in support of his petition no later than **28 days thereafter**. The respondent shall submit a brief in opposition no later than **28 days thereafter**. Duke may reply no later than **21 days thereafter**.

Alternatively, the respondent may move to dismiss Duke's petition no later than **60 days after this order**. In the event the respondent moves to dismiss the petition, Duke shall respond to that motion no later than **28 days thereafter**. The respondent may then reply no later than **28 days thereafter**.

Unless the court determines that additional proceedings are necessary, this shall conclude the briefing. The court will then resolve the petition on the written record.

**SO ORDERED.**

Dated at Milwaukee, Wisconsin this 28th day of June, 2021.

  
WILLIAM E. DUFFIN  
U.S. Magistrate Judge